

EXHIBIT #12
TO
DEYOUNG DECLARATION

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German Held in Afghan Jail Files Lawsuit

By SCOTT SHANE

WASHINGTON, Dec. 6 - A German citizen who says he was abducted in 2003, beaten and taken to Afghanistan by American agents in what was apparently a case of mistaken identity filed a lawsuit in federal court on Tuesday against George J. Tenet, the former C.I.A. director, and three companies suspected of being involved in secret C.I.A. flights.

The plaintiff, Khaled el-Masri, 42, a German of Lebanese descent, was refused entry to the United States after arriving Saturday in Atlanta on a flight from Germany to appear at the news conference Tuesday in Washington where the lawsuit was announced. Instead, Mr. Masri addressed the conference from Germany by video link, describing how he was seized on the Serbian-Macedonian border, kicked and hit, photographed nude and injected with drugs during five months in detention in Macedonia and in Afghanistan.

"I want to know why they did this to me," said Mr. Masri, whose German was translated into English by an interpreter. Now living with his wife and children in Germany, Mr. Masri, who has worked as a car salesman and carpenter but is currently unemployed, said he had not fully recovered from the trauma of his experience.

"I don't think I'm the human being I used to be," he said.

In an interview on Tuesday in Germany, Mr. Masri said his weekend encounter with immigration officers in Atlanta made him briefly fear that his ordeal in 2003 and 2004 might be repeated.

"My heart was beating very fast," he said. "I have remembered that time, what has happened to me, when they kidnapped me to Afghanistan. I have remembered and was afraid."

A spokeswoman for United States Customs and Border Protection, Kristi Clemens, confirmed that Mr. Masri was denied entry. She said he was turned away based on information received from other American agencies, but she declined to describe the information or to say whether Mr. Masri's name had again been confused with that of a wanted operative of Al Qaeda, the reason officials have given for his mistaken detention in 2003.

The lawsuit was filed in Federal District Court in Alexandria, Va., by lawyers for the American Civil Liberties Union.

Since it was first reported in January by The New York Times, the Masri case has often been cited as an example of tough American counterterrorism policies gone awry.

Mr. Masri's lawyers allege in the lawsuit that Mr. Tenet learned of the mistake but left Mr. Masri in detention for two more months before having him set free at night on a hillside in Albania in May 2004.

The lawyers argue that even though he is not an American citizen, the treatment of Mr. Masri violated his right to due process under the Fifth Amendment as well as the Geneva Conventions and other bans on torture. He is suing under the Alien Tort Statute, adopted in 1789, which permits noncitizens to sue in the United States for violations of international norms. The suit seeks unspecified monetary damages "in an amount over \$75,000."

His lawsuit is the latest development in a legal assault by human rights groups on the Central Intelligence Agency's clandestine operations to detain, transport and interrogate suspected terrorists since the attacks of Sept. 11, 2001.

The lawsuit appears to be the first to single out a web of companies that operate a fleet of aircraft believed to be used by the C.I.A. The companies identified in the suit were Aero Contractors, a Smithfield, N.C., company that provides crews and maintenance; Premier Executive Transport Services of Dedham, Mass., which in 2003 owned the Boeing business jet that the lawsuit says was used to take Mr. Masri from Macedonia to Afghanistan; and Keeler and Tate Management L.L.C., of Reno, Nev., which owns the jet now.

The lawsuit could force the C.I.A. to acknowledge its secret relationship with the companies, said Anthony D. Romero, executive director of the A.C.L.U. He said the A.C.L.U. took the case to penetrate what he called the "culture of impunity" in the Bush administration for human rights violations and to force the C.I.A. to abandon practices in conflict with American values.

A spokesman for Mr. Tenet, who served as C.I.A. director from 1997 to 2004, said he had no comment, as did a spokesman for the C.I.A.

Robert W. Blowers, an executive at Aero Contractors, said, "I don't have anything to say about it." Attempts to reach representatives of the other two air companies were unsuccessful.

Michael Greenberger, a law professor at the University of Maryland who teaches a course on the law of counterterrorism, said Mr. Masri's lawyers faced "a steep uphill climb" in making their case in the Eastern District of Virginia and the conservative United States Court of Appeals for the Fourth Circuit in Richmond, Va. But Mr. Greenberger said the Supreme Court, in a ruling last year, suggested the Alien Tort Statute might apply to claims of torture.

Souad Mekhennet contributed reporting from Germany for this article.